



- c) That on the 5<sup>th</sup> day of July 2022, the 1<sup>st</sup> Applicant bought the suit land from the 1<sup>st</sup> Respondent and the said land is registered in the names of **Noah Kasigwa Byenkya Atwooki** but by a consent judgment and a decree in **C.S No.0013 of 2017, Abdul Malik Mugisa Vs Noah Kasigwa Byenkya Atwooki & Anor**, under **clause 5**, the 1<sup>st</sup> Respondent was granted permission to secure a buyer for 2 square miles.
- d) That the 1<sup>st</sup> Applicant based on the consent judgment and decree purchased the whole land from the 1<sup>st</sup> Respondent by a land sale agreement dated 5/7/22.
- e) That by Memorandum of undertaking, the 1<sup>st</sup> Respondent agreed that a vesting order be granted in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants so as to secure payment of the whole purchase price.
- f) That the transfer of the land has not yet been executed because the registered proprietor, **Noah Kasigwa Byenkya**, the 1<sup>st</sup> defendant in **C.S No.23/2017** in the High Court of Uganda Holden at Masindi passed away and thus transfer instrument in favour of the Applicant cannot be executed thus this application for a vesting order.

[3] Both the Respondents were duly served with court process as per the affidavit of service on record dated 22/11/2022, though the 1<sup>st</sup> Respondent filed an affidavit in reply, the 2<sup>nd</sup> Respondent failed and or ignored to file one.

## **Counsel legal representation**

[4] The Applicant was represented by **Mr. Wandera Hamuza** while the Respondent was represented by **Ms. Akuguzibwe**. Both counsel filed their respective written submissions for consideration in the determination of this application. The 1<sup>st</sup> Respondent did not object to the application.

## **Issue No.1: Whether the Applicants are entitled to a vesting order.**

[5] The conditions for granting a vesting order are set out in **S.167 RTA** which provides as follows;

***“167. Power of registrar to make a vesting order in cases of completed purchase***

*If it is proved to the satisfaction of the registrar that land under this Act has been sold by the proprietor and the whole of the purchase money paid, and the purchaser has or those claiming under the purchaser have entered and taken possession under the purchase and that entry and possession have been acquiesced in by the vendor or his or her representatives, but that a transfer has never been executed by the vendor and cannot be obtained by reason that the vendor is dead or residing out of the jurisdiction or cannot be found, the registrar may make a vesting order in the premises and may include in the order a direction for the payment of such an additional fee in respect of assurance of title as he or she may think fit...”*

[6] In **Aida Najjemba Vs Ester Mpagi, CACA No.74/2005**, it was held “that there are 4 conditions provided under the section in order for the registrar to exercise his powers:

1. *The land must be registered under the provisions of the Registration of Titles Act and the purchaser must have paid the whole of the price to the vendor.*
2. *The purchaser or those claiming under him or her have not taken possession of the purchased land.*
3. *That the entry into possession of the purchased land has been acquiesced by the vendor or his or her representative.*
4. *The transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or he /she cannot be found.”*

[7] The uncontroverted evidence of the Applicants is that the suit land is under the operation of the RTA in the names of **Noah Kasigwa Byenkya Atwooki** and the matters concerning the suit land were concluded and settled by a consent vide **Masindi H.C.C.S No.23 of 2017** in which the 1<sup>st</sup> Respondent sold his interest in the suit land to the 1<sup>st</sup> Applicant as per the memorandum of understanding on record dated 10/10/22. The M.O.U and the consent decree settles the requirement for full payment of the purchase price as the 1<sup>st</sup> and 2<sup>nd</sup> Applicant agreed that a vesting order issues in favour of the 2<sup>nd</sup> Applicant, as the vendor’s representative, and the 1<sup>st</sup> Applicant as the purchaser. Lastly, the 1<sup>st</sup> Applicant’s further uncontroverted evidence is that he has been in possession of the suit property ever since the execution of the sale

agreement and continues to be in possession with a residential house thereon and rearing of animals. The registered proprietor **Noah Kasigwa Byenkya** passed away and thus transfer instruments in favour of the Applicants could not be executed.

- [8] In conclusion, though the reading of **S.167 RTA** envisages the Registrar of titles as the person/officer which under the law is clothed with the statutory authority to vest land in persons who fulfill the conditions stipulated there under, it is settled by the court of appeal in **Aida Najjemba Vs Ester Mpagi (supra)** as follows;

*“Other complaints that learned counsel raised on this ground were that that the application was misconceived and premature, that it should have been made before the registrar in the first instance and therefore the trial judge ought not to have granted it... The issue to resolve is whether the application before the High Court for a vesting order was properly filed under the provisions of section 167 (supra). I agree with counsel for the Appellant that an application for a vesting order must be made to the registrar of titles. However, the High Court has unlimited jurisdiction in all matters. The learned judge was right to grant a vesting order under section 167 (supra).”*

- [9] From the foregoing and the affidavit evidence on record, this court is satisfied that the Applicants meet all the set conditions for the grant of a vesting order.

## **Issue No.2: What remedies are available to the parties.**

- [10] The Applicants proved to this court that the 1<sup>st</sup> Applicant purchased the suit land pursuant to a consent judgment and decree whereupon he took possession of the same and the registered proprietor having passed on thus transfers could not be fully completed, I accordingly grant this application in the following terms:

1. A vesting order doth issue vesting the land into the names of **Sendagire Hudhair** and **Harora Kakim**, comprised in **LRV 1507/21, Folio 21, Bugahya County, Block 6, plot 106 land at Kabatendule Hoima District measuring 518.020 hectares.**
2. The Commissioner Land Registration is ordered to register the Applicants, **Sendagire Hudhair** and **Harora Hakim** as the new

registered proprietors and court hereby vacates all encumbrances by the 1<sup>st</sup> Respondent or any one claiming under him.

3. The Applicants will bear the costs of this application.

Signed, dated and delivered at Hoima this 8<sup>th</sup> day of **December, 2022.**

**Byaruhanga Jesse Ruggyema**

**JUDGE.**